

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JAN 20 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

	)	2 CA-JV 2011-0089
	)	DEPARTMENT B
IN RE ALEXANDOR A.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19712701

Honorable Hector E. Campoy, Judge

AFFIRMED

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Robert J. Hirsh, Pima County Public Defender  
By Susan C. L. Kelly

Tucson  
Attorneys for Minor

Barbara LaWall, Pima County Attorney  
By Bunyke Chi

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ESPINOSA, Judge.

¶1 The juvenile court adjudicated Alexandor A. delinquent for having possessed marijuana and drug paraphernalia. At a separate disposition hearing the court concluded Alexandor had completed the community service that had been recommended as a consequence for his delinquency and therefore ordered the case closed. Alexandor appeals, challenging the juvenile court’s denial of his motion to suppress evidence.

¶2 In reviewing a ruling on a motion to suppress, “[w]e review only the evidence presented at the suppression hearing, and we view it in the light most favorable to upholding the juvenile court’s factual findings.”<sup>1</sup> *In re Ilono H.*, 210 Ariz. 473, ¶ 2, 113 P.3d 696, 697 (App. 2005) (citation omitted). On a weekday afternoon in January 2011, Tucson police officer Brian Bachtel was on patrol in a vehicle when he noticed two juveniles walking in his direction down an alleyway. The juveniles “turned and started to walk in the opposite direction” and one of them ran away. The other, then fifteen-year-old Alexandor, “had gone into some oleander bushes.” Bachtel got out of his vehicle as Alexandor was coming out of the bushes and asked Alexandor “to come towards [him].” As Bachtel got out of the vehicle he could smell burnt marijuana and, as Alexandor

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<sup>1</sup>The juvenile court conducted the hearing on Alexandor’s motions to suppress at the same time as the adjudication hearing. Alexandor suggests on appeal that the court’s consolidating the suppression hearing and trial was error because it was inconsistent with the manner in which such proceedings occur in adult cases. But, Rule 14, Ariz. R. P. Juv. Ct., expressly permits the juvenile court to consolidate “any combination of hearings,” except those relating “to transfer to another court.” Moreover, because the court is the finder of fact, concerns about the prejudicial effect on a jury of evidence presented at a suppression hearing are absent in the context of juvenile adjudication hearings. *Cf. State v. Warner*, 159 Ariz. 46, 52, 764 P.2d 1105, 1111 (1988) (trial court presumed to know and apply rules of evidence and burden of proof), *citing State v. Hadd*, 127 Ariz. 270, 275, 619 P.2d 1047, 1052 (App. 1980).

approached, Bachtel noticed he “made a movement to turn and drop something” that “looked like a baggie containing marijuana or a green leafy substance.”

¶3 Bachtel detained Alexandor, placed him in handcuffs in the back of his patrol car, and informed him of his rights pursuant to *Miranda*.<sup>2</sup> He then retrieved the item Alexandor had dropped and confirmed it was marijuana.<sup>3</sup> While Alexandor was in the back of the officer’s car, the officer asked if he had been “involved in smoking the marijuana.” Alexandor initially said no and refused to identify the other juvenile who had been with him. Eventually, however, he admitted the marijuana was his.

¶4 Alexandor moved to suppress both his statements to Bachtel and the marijuana and plastic bag. He argued Bachtel had stopped him without reasonable suspicion and his statements had been made involuntarily. The juvenile court granted the motion to suppress Alexandor’s statements as involuntary,<sup>4</sup> but ruled the marijuana and plastic bag admissible, concluding Bachtel had not seized Alexandor when he asked him to come toward him. We review a “ruling on a motion to suppress evidence for an abuse of discretion if it involves a discretionary issue, but review constitutional issues and purely legal issues de novo.” *State v. Moody*, 208 Ariz. 424, ¶ 62, 94 P.3d 1119, 1140 (2004) (citation omitted); *see also In re Maricopa Cnty. Juv. Action No. JT30243*, 186

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<sup>2</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup>Bachtel also found two “marijuana pipes,” but Alexandor was not charged with possession of those items.

<sup>4</sup>The court did, however, rule that the state could use the statements for “impeachment.”

Ariz. 213, 216, 920 P.2d 779, 782 (App. 1996) (appellate court reviews factual determinations for “clear and manifest error” but questions of law de novo).

¶5 The Fourth Amendment guarantees individuals freedom from unreasonable searches and seizures by the government. U.S. Const. amend. IV; *see also* U.S. Const. amend. XIV, § 1; Ariz. Const. art. II, § 8. However, consensual encounters between law enforcement officers and individuals do not violate the Fourth Amendment. *State v. Robles*, 171 Ariz. 441, 443, 831 P.2d 440, 442 (App. 1992) (no basis to conclude defendant had been “seized” merely because police officers walked up to his parked vehicle and asked questions of him).

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.

*Florida v. Royer*, 460 U.S. 491, 497 (1983). “So long as a reasonable person would feel free ‘to disregard the police and go about his business,’ the encounter is consensual and no reasonable suspicion is required.” *Florida v. Bostick*, 501 U.S. 429, 434 (1991), *quoting California v. Hodari D.*, 499 U.S. 621, 628 (1991) (citation omitted). A person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all the circumstances, a reasonable person would believe that he was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *see also State v. Cañez*, 202 Ariz. 133, ¶ 54, 42 P.3d 564, 582 (2002).

¶6 When Bachtel saw Alexandor drop the bag of marijuana, he had merely gotten out of his car and asked Alexandor to come toward him. We agree with the juvenile court that a reasonable person in that circumstance would still feel free to leave. Bachtel was the only officer present at that time, and he did not threaten Alexandor, display his weapon, or touch him. *See Mendenhall*, 446 U.S. at 554-55 (giving “[e]xamples of circumstances that might indicate a seizure”); *State v. Childress*, 222 Ariz. 334, ¶ 10, 214 P.3d 422, 426 (App. 2009) (in absence of physical force, seizure requires submission to show of authority). We therefore conclude Bachtel had not seized Alexandor at the point at which the marijuana was discovered, and the court therefore properly denied his motion to suppress the evidence. *See Mendenhall*, 446 U.S. at 555; *see also Royer*, 460 U.S. at 498 (“If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.”).

¶7 In support of a contrary conclusion, Alexandor relies on *State v. Rogers*, 186 Ariz. 508, 924 P.2d 1027 (1996). In that case, police in an unmarked car approached Rogers at night. *Id.* at 509, 924 P.2d at 1028. “One of them held his badge in his hand to identify himself and said, ‘police officers, we need to talk to you.’” *Id.* Rogers stopped briefly and said something to the officers before fleeing the scene. *Id.* at 509, 511, 924 P.2d at 1028, 1030. Our supreme court concluded that the police officer’s conduct of holding up his badge and saying “‘we need to talk to you’” amounted to a seizure when judged by the totality of the circumstances from the perspective of a reasonable person. *Id.* at 510-11, 924 P.2d at 1029-30.

¶8 But *Rogers* is distinguishable. There, two officers approached Rogers at night, and one of them held out his badge and told him they “need[ed] to talk to [him],” thereby “conveying a message of required compliance.” *Id.* at 510, 924 P.2d at 1029. Thus, the facts in *Rogers* relating to whether or not a seizure had occurred differ from those presented here—Bachtel’s actions did not demand such required compliance, and did not amount to a seizure. Therefore, the similarities between the facts here and those in *Rogers* on which that court relied for its further conclusion that police in that case had lacked reasonable suspicion to stop the defendant, *id.* at 510-11, 924 P.2d 1027, 1029-30, and on which Alexandor primarily relies, are irrelevant. In short, we need not reach the question of reasonable suspicion in the absence of a seizure. *See State v. Millan*, 185 Ariz. 398, 401, 916 P.2d 1114, 1117 (App. 1995) (“Under these circumstances, neither a search nor a seizure has occurred and reasonable suspicion by a government agent of criminal activity is not required.”).

¶9 In any event, however, even had Bachtel’s actions constituted a seizure of Alexandor, the evidence presented at the suppression hearing showed Bachtel had “a justifiable suspicion that the particular individual to be detained [wa]s involved in criminal activity.” *State v. Graciano*, 134 Ariz. 35, 37, 653 P.2d 683, 685 (1982), *citing United States v. Cortez*, 499 U.S. 411, 418 (1981). Indeed, Bachtel identified “specific and articulable facts” to justify his suspicion of Alexandor. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Bachtel testified that as he had exited his vehicle, and apparently before he spoke to Alexandor, he “could smell marijuana in the air.” Thus, even if Bachtel had seized

Alexandor, a brief investigatory stop was justified under the circumstances. *See State v. Blackmore*, 186 Ariz. 630, 632-33, 925 P.2d 1347, 1349-50 (1996).<sup>5</sup>

¶10 The juvenile court's adjudication and disposition orders are affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

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<sup>5</sup>Because it concluded Bachtel had not seized Alexandor, and perhaps because the state primarily argued that ground, the juvenile court did not reach the issue of reasonable suspicion. But, the state did raise the issue in its answer to Alexandor's motion and has arguably asserted it on appeal, albeit only in the conclusion to its brief with a reference to an officer not involved in this case.